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28 November 1978

MEMORANDUM FOR THE RECORD

FROM : [REDACTED]
STAT Assistant Legislative Counsel

SUBJECT : Briefing by NSA's General Counsel to Monthly Meeting
of Executive Branch Legislative Counsel's/Legislative
Affairs Staffs

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1. On 28 November 1978, the undersigned along with other OLC representatives attended subject meeting along with representatives from the IC Staff, DIA, DOD Legislative Affairs and General Counsel's offices, Air Force and Navy Legislative Liaison offices, the FBI and State Department. One portion of subject meeting was devoted to a briefing by NSA's General Counsel, [REDACTED] who spoke to the group concerning the previous day's SCC Title II-Charter meeting and other legislative items currently of interest within the Executive Branch. [REDACTED] made the following comments with regard to the Charter in general and the Title II SCC meeting in particular:

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-- All Charter Titles with the exception of Title II have been sent to the President through the SCC;

-- It was the consensus of the SCC Working Group that the Intelligence Community could not function under restrictions "a la S. 2525" no matter how fashioned;

-- SSCI Staff Director Bill Miller was provided copies of the Working Group's redrafts of Titles I and II prior to the 27 November SCC meeting; Mr. Miller responded to the redrafts with a 12 page letter attacking the spirit of the Working Group and underscoring the fact that no broad political consensus re Charters is possible without Senate input into the Administration's Charter deliberations [Note: the 12 page letter was made an addendum to the Working Group's Title II's "issues paper"];

-- At the 27 November SCC meeting the VP led the attack on the Working Group product, this attack sounding similar to the SSCI's reclama; the VP - whose objections were reflected in the comments of a number of other principals present (Justice-State) - objected to the number of issues presented to the SCC by the Working Group and to the sheer mass of paper that the "issues paper" represents, indicated a lack of desire to wade thru the "issues paper" and underscored the unthinkability of giving anything of the sort to the President;

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-- No issues were decided by the SCC; the entire matter was referred to a "new committee" - to function below the SCC (and reportable thereto) but above the Working Group with the following members named: David Aaron (NSC); Frank Carlucci (CIA); Stanley Reasor (DOD); a Mr. Newsome (State); and Mr. Civiletti (Justice) [Note: at the first meeting of the "new committee" the following "principals" were present: David Aaron (NSC); Ben Reed (State); DDCI (CIA); S. Reasor (DOD); John Harmon (Justice); Jim Nolan (FBI); and Robert Lipshutz (White House)];

-- The task of the "new (subcabinet policy level) committee is to whittle down the 39 issues contained in the "issues paper" to a half-dozen to be reported to the SCC;

-- No timetable for completion of the new committee's work has been set;

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-- [] shared the following personal perception of the results flowing from the 27 November SCC meeting:

- the prospects for Charter Legislation are dimmer now if not altogether deadened or destroyed;

- the small "Charter window" that was opened is no longer available in view of the lack of any consensus piece;

- the chances of Charter Legislation getting through the Congress are nil especially on the House side where the conservatives will unite in opposition thereto when they perceive how intelligence operations will be negatively impacted by specific Charter provisions;

- the timing under which the Senate staff was working, e.g., a consensus bill by 1 January for early reintroduction in the 96th Congress, is entirely unworkable now;

- the prognosis is gloomy with regard to salvaging anything out of the Charter "wreckage" since Bill Miller has emphatically stated on numerous occasions there will be no legislation without consensus.

-- On the House side Tom Latimer (HPSCI Staff Director) and Mike O'Neil (HPSCI Chief Counsel) have both expressed skepticism over having a comprehensive Charter replete with restrictions [Note: this was confirmed by the Legislative Counsel - Mr. Hitz - who had a meeting with Tom Latimer the same morning].

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2. [] closed the Charter portion of his briefing by opining that we might see three separate bills introduced along institutional (entity) lines each containing its own "restrictions" provisions: a CIA Charter, an NSA Charter, and an FBI Charter.

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3. [] indicated that in his opinion three other legislative items are of current interest and should be closely scrutinized in terms of upcoming legislative initiatives:

- revision of the espionage laws;
- disclosure of identity of agents undercover; and,
- FOIA relief. STAT

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4. With regard to the subject of legislation to protect the identity of agents undercover, [] stated without explaining further that the Kampiles case could have an adverse effect on such legislation.

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[] opined that procedural steps could be taken on the criminal and civil sides of such issues that would make it easier to handle Kampiles type cases (once again, [] did not elaborate). [] queried as to why we should have to show the jury even one page of the classified document itself. He commented that any such legislation should be framed in terms of an Intelligence Community protection.

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5. With regard to FOIA relief, [] made the following points:

- the Intelligence Community as a whole shares a need to change the law;
- any exemption for unevaluated intelligence material or other broad category of records systems is unlikely to pass;
- an effort might be made to run with a narrowly drafted exemption;
- we might think in terms of a total exemption for all information received from foreign liaison sources, which information was given with the understanding that it is to be kept confidential;
- the need for such an exemption could easily be backed up factually and would serve the added purpose of giving assurances to such sources that efforts are being made to protect such information from public disclosure;

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-- [] made reference to a trend in the D.C. circuit that has the effect of "chipping away" at any protection thus far provided under the FOIA exemptions; he cited specifically the Joan Baez case wherein the court required NSA to publicly reveal a classified affidavit in the case - NSA filed a motion to reconsider the ruling [] also made mention of the growing impatience by the court with Intelligence Community claims of "national security" interests. All of this points to the need for legislative relief.

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6. [] closed by suggesting that a joint conference be held with all entities of the Intelligence Community represented to discuss what specific legislative relief could be fashioned in these areas.



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